

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

In Re: )  
 )  
AREDIA and ZOMETA PRODUCTS ) No. 3:06-MD-1760  
LIABILITY LITIGATION ) Judge Campbell  
(MDL No. 1760) ) Magistrate Judge Brown  
 )  
This Document Relates to: All Cases )

**PRETRIAL ORDER #2**  
**Time and Billing Guidelines**

All plaintiffs counsel are entitled to seek reimbursement for costs and fees incurred in performing tasks for the common benefit of the MDL as a whole. Reimbursement for costs and/or fees for services of all plaintiffs' counsel performing such functions will be set at a time and in a manner established by the Court after due notice to all counsel and after a hearing. The following standards and procedures are to be utilized by any counsel seeking fees and/or expense reimbursement pursuant to this order.

**General Standards**

1. All time and expenses submitted must be incurred only for work authorized by the Plaintiffs' Steering Committee ("PSC").
2. These Time and Expense Guidelines are intended for all activities performed and expenses incurred by counsel that relate to matters common to all claimants in MDL 1760.
3. Time and expense records must be submitted on and with the forms to be designated and prepared by the PSC. The forms may be obtained from the PSC or Plaintiffs' Liaison Counsel ("PLC").
4. Time and expense forms must be submitted on a quarterly basis to the PLC, C. Patrick Flynn, Esq., Flynn and Radford Attorneys, P.C., Seven Springs I, Suite 150, 320 Seven Springs Way, Brentwood, Tennessee 37027, Telephone: (615) 370-9448, Facsimile: (615) 370-9313, e-mail: [pflynn@flynnandradford.com](mailto:pflynn@flynnandradford.com). The PLC shall

compile and submit the time and expense forms to the PSC for use in preparing a quarterly report to the Court. It is therefore essential that each plaintiff's counsel or firm timely submit its records for the preceding quarter.

5. All submissions shall be transmitted electronically or in hard copy to the PLC. If hard copy submissions are made, an original and one duplicate copy must be provided.

6. The first time and expense forms are due on October 10, 2006 and should include all time through September 30, 2006. Thereafter, time and expense forms shall be submitted to the PLC within ten days of the end of each quarter and shall cover the time period through the end of the preceding quarter.

7. The PSC shall file time and expense reports with the Court on a quarterly basis, forty-five days after the end of the preceding quarter. These reports will include both time and expenses and will summarize, with back-up detail, the submissions of all firms and/or plaintiff's counsel. The PSC may hire a person or firm, subject to Court approval, to assist in preparation of the quarterly reports. Submission of the quarterly reports to the Court shall be filed under seal, shall be considered attorney work product and will not be given to opposing counsel.

8. The PLC may, from time to time, in lieu of quarterly reports, submit expense forms to the PSC for approval and payment.

#### Time Reporting

9. Only time spent on matters common to all claimants in MDL 1760 will be considered in determining fees. No time spent on developing or processing any case for an individual client (claimant) will be considered or should be submitted.

10. All time must be accurately and contemporaneously maintained. All counsel shall keep a daily record of their time spent in connection with this litigation, indicating with specificity the hours, location, and particular activity (such as "conduct of deposition of A.B."). The failure to maintain such records, as well as insufficient description of the activity may result in a forfeiture of fees. The PSC and PLC may prepare Litigation Task Definitions to be used by all plaintiffs' counsel in recording their time.

11. All time for each firm shall be maintained in quarter-of-an-hour increments. Failure to do so may result in time being disallowed.

12. All time records and forms shall be certified by a partner from the submitting firm attesting to the accuracy and correctness of the quarterly submission.

**Expense Reporting**

1. Advanced costs will be deemed as either "Shared" or "Held."
  - a. Shared Costs are costs that will be paid out of a separate Plaintiffs' Steering Committee MDL 1760 Fund account to be established by the PSC and PLC and to be funded by all members of the PSC and others as determined by the PSC. The PSC MDL 1760 Fund account will be administered by a member of the PSC.
  - b. Held Costs are those that will be carried by each attorney in MDL 1760 and reimbursed as and when determined by the PSC.
2. Each member of the PSC and any other attorneys or law firms approved by the Court will contribute to the Plaintiffs' Steering Committee MDL 1760 Fund at times and in amounts sufficient to cover the administration of the MDL. The timing and amount of each assessment will be determined by the PSC.

**Shared Costs**

1. Shared Costs are costs incurred for the common benefit of the MDL as a whole. No client-related costs can be considered as Shared Costs. All costs of a substantial nature that meet these requirements and fall under the following categories shall be considered Shared Costs and qualify to be submitted and paid directly from the MDL account. All Shared Costs must be approved by the PSC and PLC prior to payment. Shared Costs include:
  - a. court, filing and service costs;
  - b. deposition and court reporter costs;
  - c. document depository: creation, operation, staffing, equipment and administration;
  - d. PLC administrative matters (e.g. expenses for equipment, technology, courier services, long distance, telecopier, electronic service, photocopy and printing, secretarial/temporary staff, etc.);
  - e. PSC group administration matters such as meetings and conference calls;
  - f. legal and accountant fees;

- g. expert witness and consultant fees and expenses;
- h. printing, copying, coding, scanning (out of house or extraordinary firm costs);
- i. research by outside third party vendors/consultants/attorneys;
- j. common witness expenses including travel;
- k. translation costs;
- l. bank or financial institution charges;
- m. investigative services.

2. Requests for payments should include sufficient information to allow the PSC and PLC to account properly for costs and to provide adequate detail to the Court. All requests shall be subject to review and approval by the PSC.

#### **Held Costs**

- 1. Held Costs are costs incurred for the global benefit of the MDL. Held costs are those that do not fall into the above Shared Costs categories but are incurred for the benefit of all plaintiffs in general. No specific client-related costs can be considered as Held Costs. All costs of a substantial nature that meet these requirements and fall under the following categories shall be considered Held Costs and qualify to be submitted for consideration by the PSC and the Court for future reimbursement:
  - a. telefax charges;
  - b. postage, shipping, courier, certified mail;
  - c. printing and photocopying (in-house);
  - d. computerized research - Lexis/Westlaw;
  - e. telephone - long distance (actual charges only);
  - f. travel - (following the travel expense guidelines set forth below) - for attorneys for deposition, court or legislative including:
    - i. reasonable airfare;
    - ii. reasonable ground transportation;

- iii. reasonable hotel;
- iv. reasonable meals and entertainment; and
- v. reasonable other (parking);

g. secretarial, paralegal and clerical overtime.

#### **Travel Limitations**

Except in extraordinary circumstances approved by the PSC or PLC, all travel reimbursements are subject to the following limitations:

1. Airfare. Only the lowest-priced available coach airfare at time of booking (either at restricted coach rates or rates which allow the reservation to be re-booked without surcharge and other agency fees) for a reasonable itinerary will be reimbursed.
2. Hotel. Hotel room charges will be reimbursed up to \$175 per night excluding taxes.
3. Meals. Meal expenses must be reasonable and will not include bills for liquor.
4. Cash Expenses. Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, pay telephone, etc.) will be reimbursed up to \$50.00 per trip, as long as the expenses are properly itemized.
5. Rental Automobiles. Luxury automobile rentals will not be fully reimbursed.
6. Mileage. Mileage claims must be documented by stating origination point, destination, total actual miles for each trip, and the rate per mile paid by the member's firm. The maximum allowable rate will be the maximum rate allowed by the IRS (currently 40.5 cents per mile).

#### **Non-Travel Limitations**

The following apply:

1. Long Distance and Cellular Telephone: Long distance and cellular telephone charges must be documented. Copies of the telephone bills must be submitted with notations as to which charges relate to the Aredia and Zometa litigation.

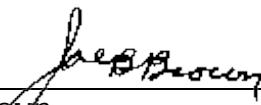
2. Shipping, Courier, and Delivery Charges. All claimed expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package.
3. Postage Charges: A contemporaneous postage log or other supporting documentation must be maintained and submitted. Postage charges are to be reported at actual cost.
4. Telefax Charges: Contemporaneous records should be maintained and submitted showing faxes sent and received. The per-fax charge shall not exceed \$1.00 per page.
5. In-House Photocopy. A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is 10¢ per page.
6. Secretarial, Paralegal and Clerical Overtime. An itemized description of the task and time spent must be submitted for secretarial, paralegal and clerical time. All such overtime must be approved before submission by the PSC or PLC.
7. Computerized Research - Lexis/Westlaw. Claims for Lexis, Westlaw, and other computerized legal research expenses should be in the exact amount charged to the firm for these research services.

**Procedures To Be Established by Plaintiffs' Liaison Counsel**

The PSC and PLC shall establish forms and procedures to implement and carry out the time and expense submissions required by the Court and necessary to compile and maintain the records.

Questions regarding the guidelines or procedures or the completion of any forms should be directed to the PSC or PLC.

It is so ORDERED.

  
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/s \_\_\_\_\_  
Joe B. Brown  
United States Magistrate Judge

APPROVED FOR ENTRY: